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April 28, 2020

Bruce Augustine
Enforcement and Compliance Assurance Division (3ED21)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Augustine.bruce@epa.gov

Re: Paul Wissmach Glass Company, Inc.
Notice of Violation /Opportunity to Show Cause.

Dear Mr. Augustine:

This letter will supplement my letter to you dated February 21, 2020 on behalf of Paul Wissmach Glass Company Inc. ("PWG") and in doing so will offer additional information in support of the conclusion that 40 C.F.R., Part 63, Subpart SSSSSS ("6S") is not applicable to the PWG facility located at 420 Stephen Street, Paden City, West Virginia 26159.

Subsequent to our conference call with you on April 16, 2020, it was called to my attention that on April 12, 2016, EPA offered a letter containing a non-binding regulatory interpretation of the applicability of 6S to art glass manufacturers in Portland Oregon. The letter setting forth that regulatory interpretation can be found at this address: <https://www.oregon.gov/deq/nr/041316EPAGuidance.pdf>.

Significantly, EPA, in that regulatory interpretation, properly relied on preamble language in the final 6S rule to clarify the meaning of the terms used in the rule and to confirm that the rule was not intended to apply to small periodic or pot furnaces. Accordingly, the EPA letter offered the following interpretation of the 6S rule and characterization of the furnaces that are exempt from the 6S rule:

In choosing to exempt non-continuous furnaces, the EPA focused on their operation being periodic. A furnace that shuts down seasonally or is only operated for portions of the year would not be considered a continuous furnace. This

revision was meant to address the concerns of small operators or artisanal shops which may turn kilns/furnaces on and off regularly. The furnaces you describe are kept hot (operated) for a year or more between rebrickings and produce glass on a routine schedule.

EPA then applied that interpretation of the 6S rule to the Oregon furnaces involved and reached the conclusion that the Oregon furnaces were not exempt. It is significant however, that the Oregon furnaces involved were large refractory brick “tank” furnaces that are fundamentally different from the smaller clay pot furnaces used by PWG that have a brief life cycle.

As we pointed out in our letter of February 21, 2020, the primary means used by PWG to produce glass from raw material containing HAP Metal are eight (8) pots. Unlike the Oregon facilities addressed in EPA’s 2016 letter which use tanks lined with refractory bricks that operate a year or more between rebrickings, the PWG pot furnaces use clay pots to hold the glass. These clay pots are very fragile and have a useful life of between two (2) weeks and six (6) months (an average of 3.5 months) before the furnaces are shut down to allow the clay pots to be rebuilt. The clay pots used by PWG are also very much smaller than tanks. Because the clay pots are operated for only brief periods of time (relative to that tanks addressed in EPA’s 2016 regulatory interpretation), they cannot be considered a continuous furnace.

While PWG utilizes a single tank to produce glass using a HAP Metal (manganese), that tank is used only two (2) weeks each year and certainly cannot be considered continuous by anyone’s definition.

As EPA finalized the 6S rule in 2007, the agency acknowledged that it elected to pursue the area source – rather than MACT – approach to allow it to consider cost and economic impact on small businesses. Accordingly, EPA revised the proposed rule to make it clear that the rule would only apply to “relatively large manufacturing plants that operated continuous glass furnaces.”¹ PWG certainly does not fit into such a category.

The final 6S rule, related preamble and now the EPA 2016 regulatory interpretation make it clear that the rule should does not apply to the small periodic clay pot furnaces of PWG (or for that matter the one tank furnace that is operated by PWG for 2 weeks each year).

¹ 72 Fed. Reg. 73186 (December 26, 2007).

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PWG is available at your convenience to address any questions you may have about the points made in this letter.

Very truly yours,

David M Flannery

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DMF/vlr

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